IN THE HIGH COURT OF JUDICATURE AT BOBBY

APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO.391 OF 1996

The State of Maharashtra ...Appellant.

V/s

1. Nitin Mahadeo Kavadkar
2. Vilas Shantaram Patankar
3. Vivek Dattatraya Gharat
4. Pradip Dattatraya Ghodvinde
5. Sanjay Ganpat Panchal
6. Manohar Parshuram Morbekar,

All residents of Neral, Kumbhar Alley, Taluka Karjat, District : Raigad. ...Respondents.

Mr. B.H. Mehta, APP for the appellant - State.

Mrs. Teja Katdare, advocate for the respondents.

ALONG WITH

CRIMINAL REVISION APPLICATION NO.67 OF 1996

Shri Bhiku Sakharam Kharate ...Petitioner.

V/s

Nitin Mahadeo Kavadkar and Ors. ...Respondents.

Mrs. Teja Katdare, advocate for the respondents.

Mr. B.H. Mehta, APP for the State.

CORAM : V.G.PALSHIKAR & R.C.CHAVAN, JJ

DATED : 19TH JULY, 2005

COMMON ORAL JUDGMENT : (Per R.C.Chavan, J)

1. This judgment disposes of appeal against acquittal filed by the State and revision preferred by the original complainant against the judgment of acquittal rendered by the learned Second Additional Sessions Judge, Alibag.

2. Facts which led to prosecution of respondents could be, briefly, stated as under:-

. Bhiku Sakharam Kharate, father of deceased Shekhar and injured Nitin runs Mutton Shops at Ambernath and Neral. On 3/7/1992, after closing their business, Bhiku's sons were proceedings towards Jayhind Naka at Neral and told their father accordingly, when the latter was sitting in a Barber's shop. Both Shekhar and Nitin went to Vasant Bhojanalaya and Beer Bar opposite Railway Station at Neral. When they were coming out of the hotel, a quarrel on account of accused No.2's slapping Nitin erupted but was subsided due to intervention of hotel owner Pappu. When both, Shekhar and Nitin came out of the hotel, accused Nos. 1 to 6 surrounded them and accused No.1 gave a blow by sword on the right shoulder of Shekhar. Accused No.2 - Vilas sought to give another blow of a sword to Shekhar but Nitin Kharate intervened. Accused No.2

then gave a blow by sword to Nitin, injuring Nitin. Accused No.1 stabbed Nitin on his back with sword. On victims raising cries, people were attracted and the accused persons ran away in different directions.

3. The complainant learnt of assault on his sons and immediately rushed to the spot. Nitin allegedly told Bhiku that he and his brother Shekhar were assaulted with swords by accused Nos. 1 to 6. A report was made to the Police. Both injured persons were taken to the Primary Health Centre, Neral where Shekhar was declared dead. Nitin was then treated at Dr Lamture's hospital at Badlapur. In course of investigation, Police examined several witnesses, caused post-mortem to be conducted on the body of Shekhar, seized incriminating articles and some weapons at the instance of accused No.3. On completion of investigation, charge-sheet was sent to the learned Judicial Magistrate, First Class, Karjat, who committed the case to the Court of Sessions, Alibag.

4. The learned Second Additional Sessions Judge, Alibag to whom the case was assigned, framed a charge of offences punishable under sections 147, 148, 302 read with section 149, 307 read with section 149 of the Indian Penal Code. All the accused pleaded not guilty to the said charge and claimed to be tried.

They were accordingly put on trial.

5. In course of trial, prosecution examined as many as 22 witnesses. The learned Additional Sessions Judge examined the accused at the end of the trial and upon consideration of prosecution evidence, in light of defence, held that the charges were not proved. He, therefore, acquitted all the accused. Aggrieved thereby, this appeal and revision have been filed.

6. We have heard the learned Additional Public Prosecutor for the State as also the learned Counsel for the respondents. The learned Additional Public Prosecutor submitted that the learned trial judge ought to have believed the word of the victim P.W. 3 - Nitin who was also an eye witness to the incident. He stated that hostility of other witnesses need not have resulted in disbelief in the story given by P.W. 3 - Nitin, because he was unlikely to rope in wrong persons as assailants, screening real culprits.

7. In this case, though prosecution examined 22 witnesses, including some eye witnesses, many of them turned hostile. P.W. 1 - Circle Inspector from Revenue Department prepared a map of the spot and proved it at Exhibit-34. This map gives an idea of the fact that the incident took place on a busy road

with several shops and hotels on both sides. P.W. 2 - Bhiku Kharate, the complainant had not seen the incident. He learnt of the incident, went to the spot and heard about it from his son Nitin. What he heard from his son Nitin is not relevant because Nitin has himself deposed about the incident in the Court. The evidence of P.W. 2 Bhiku, however, helps in unfolding the motive behind the attack. According to him, his sons had attended a meeting of a Committee for celebrating Satyanarayan Pooja on 20/6/1992, where his sons had sought account of the contributions collected from the accused, resulting in accused persons retaliating. However, no report about any previous incident has been lodged. The cross-examination of this witness would show that there was some overwriting in respect of the date of the report - Exhibit-36. The date of the report was changed from 4/7/1992 to 3/7/1992. Also the word "yesterday" was changed to "today" in the beginning of the report. P.W. 18 - Dy. S.P. Shri Gaikar could not explain in para 5 of his cross-examination as to how the figures and words in Exhibit-36 came to be changed. He did not make any inquiry about this overwriting.

8. The cross-examination of P.W. 2 - Bhiku, shows that his sons have been involved in some criminal cases. One of his sons Chandrakant, who is no more,

was a co-accused along with son Nitin in murder of one Amar Dagade. Nitin also faced prosecution for assaulting neighbour Kamble and one Shankar Gurav. Deceased Suresh also faced a case of assault on one Kalyankar from Badlapur. Externment proceedings had been taken out against Nitin. This would show that the complainant's family had many enemies.

9. P.W. 3 - Nitin is an injured witness who states that on 3/7/1992, he had gone with his brother Shekhar to Vasant Bhojanalaya. He stated that the accused Nos. 1 to 6 were also sitting inside the Vasant Bhojanalaya. However, the owner of Vasant Bhojanalaya P.W. 4 - Narayan Naik (who is also known as Pappu) is categorical that accused Nos. 1 to 6 did not come to his hotel on that day and no incident whatsoever took place in his hotel. He stated that Nitin and Shekhar Kharate, however, had come to his hotel and went away after consuming liquor.

10. P.W. 3 - Nitin stated that after paying bill, he and Shekhar were going out of the hotel when accused No.2 - Vilas Patankar slapped him and quarrel ensued, which was subsided due to intervention of Pappu Naik, the owner of the hotel. Needless to repeat that Pappu Naik refuses to corroborate this witness on the point of quarrel. Nitin further states that he took a

bottle of water, whereas his brother took a bottle of beer. At about 9.20 p.m., both of them came out of the hotel. As his brother Shekhar was not ready to go home, he and Shekhar both waited for some further time in front of the hotel. Accused Nos. 1 to 6 came there and then the assault began. It may thus be seen that, according to Nitin - P.W.3, the assault did not take place immediately after they came out of the hotel. When they were loitering in front of the hotel for some time, the accused assaulted them. However, in cross-examination, in para 5, he stated that the moment they came out of the Vasant Bhojanalaya, they were assaulted. It is strange that the accused persons are alleged to have assaulted the victim with swords etc and, yet, according to P.W. 3 - Nitin, when the accused were inside the hotel they did not have any weapons with them. It is not clear as to when the accused collected weapons to launch an immediate attack. The account given by P.W. 3 - Nitin, apart from lacking in corroboration from independent sources, is thus intrinsically contradictory.

11. As already stated, the owner of Vasant Bhojanalaya P.W. 4 - Narayan, turned hostile. P.W. 5 - Vilas Bhadsavale, P.W. 6 - Sanjay Patel and P.W. 8 - Balram Kadam who too were supposed to have

witnessed the incident, turned hostile.

12. In this case, the police had seized a sword vide panchanama - Exhibit 56. P.W. 14 - Namdeo Adhav was a panch at the disclosure made by accused No.3 - Vivek Gharat, regarding location of weapons and their discovery. Initially, he too turned hostile and, on cross-examination by the prosecutor, went along with the prosecution case. However, vacillating support of this witness to the cause of prosecution was rendered meaningless in course of cross-examination on behalf of the accused. He admitted that he was an accused in the case of murder of one Chandrakant, in which deceased Suresh was an eye witness, and that deceased Suresh had turned hostile in that case. He admitted good relations with the family of Kharates and also that he has good relations with Police Officers at Police Station Neral since he is associated with the Republican party.

13. Apart from this, panchanamas at Exhibits 56 and 57 do not bear signatures of the accused. Discovery of sword looses all its importance because of the evidence of P.W. 7 - Dr. Shrikant Dhake, who had examined the injured person Nitin Kharate and issued certificate at Exhibit-43. He was categorical that the injuries on Nitin could have been caused by a

weapon having sharp edges on both sides. He was categorical that article No.15 - sword was incapable of causing injuries observed by him in certificate at Exhibit-43. This may be contrasted with the evidence of P.W. 3 - Nitin. Nitin (P.W.3) stated that he as well as his brother had sustained injuries by a sword. P.W. 21 - Dr. Khadtare, who had conducted post-mortem on the body of Shekhar also was categorical that the injuries observed by him on the body of Shekhar could not have been caused by article No.15 before the court.

14. It may thus be seen that though the incident took place at market place with several shops on two sides of the road, there is no independent witness to state that any of the accused persons launched an attack on Nitin and Shekhar. The eye witnesses examined, have turned hostile. Discovery of sword does not connect the accused to crime because of the medical evidence discussed above.

15. In view of this, the finding of the learned Additional Sessions Judge that the prosecution failed to bring home the guilt of the accused cannot be faulted. Consequently, we see no reason to interfere with the finding recorded. Appeal by the State as also Revision filed by the original complainant are,

therefore, dismissed. Bail bonds, if any, furnished by the respondents shall stand cancelled.

(V.G. PALSHIKAR, J.)

(R.C. CHAVAN, J.)